

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROCHELLE NAJOR,

Plaintiff,

v.

Case No. 10-14307

G. REYNOLDS SIMS and
G. REYNOLDS SIMS & ASSOCIATES, P.C.,

Defendants.

ORDER INVITING PLAINTIFF TO FILE A REPLY

On June 10, 2011, Plaintiff filed the pending motion to amend the complaint. Defendants filed a timely response, in which they argue that the counts Plaintiff seeks to amend—counts V and VI of the complaint—have been mooted by Defendants' offer of judgment pursuant to Federal Rule of Civil Procedure 68. Defendants rely on *O'Brien v. Ed Donnelly Enterprises, Inc.*, 575 F.3d 567 (6th Cir. 2009), in support of their contentions that counts V and VI should be dismissed as moot, and that the motion to amend should be denied as a result. That case held that a Rule 68 offer of judgment moots the case or controversy when it satisfies a plaintiff's claim in full, because the plaintiff has won. 575 F.3d at 574. The case also set forth the procedures to be employed in the Sixth Circuit when such an offer is rejected and brought to the district court's attention: the court must dismiss the mooted counts and enter judgment in favor of the plaintiff for the amount offered. *Id.* at 575. In addition, the *O'Brien* court also held that an offer can satisfy the plaintiff's claims for attorney fees and costs under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, without specifying an amount if it

offers to pay the reasonable fees and costs to be determined by the court. *Id.* at 575-76; see 29 U.S.C. § 216(b).

Plaintiff did not reply to Defendants' response, which the court intends to treat as a motion to dismiss counts V, VI, VII, and VIII, and the time for a reply has come and gone. See E.D. Mich. LR 7.1(e)(2)(C). After reviewing the motion and response, the court is inclined to dismiss the counts as moot and, following a determination of the appropriate amount of attorney fees and costs, enter judgment in favor of Defendants on those counts in accordance with *O'Brien*. Before taking this action, however, the court will extend to Plaintiff one final opportunity to file a reply, which might address, for example, whether there is any reason why counts V-VIII should not be dismissed as moot and Plaintiff's motion correspondingly denied. The decision of whether to file a reply is left to Plaintiff's sound discretion. Accordingly,

IT IS ORDERED that Plaintiff is INVITED to file an optional reply addressing the issues raised in Defendants' response and in this order, but any such reply must be filed no later than **July 26, 2011**.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 20, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 20, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522